

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(New Administrative Regulation)

401 KAR 5:310. Surface water permit fees.

RELATES TO: KRS 224.01-010, 224.10-110, 224.16-050, 224.70-100, 224.70-110, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230(3), 224.16-050, 224.70-120, 33 U.S.C. 1323(a), EO 2008-507, 2008-531

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-230(3) authorizes the cabinet to amend, by administrative regulation, the discharge permit fees authorized by KRS 224.70-120. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes fees for reviewing surface water permits.

Section 1. Individual Permit Fees. The fee for review of an individual permit to discharge pollutants into waters of the Commonwealth shall be as established in Table 1 in this section.

Table 1: Individual Permit Fees	
Major Industry	\$7,000
Minor Industry	\$4,500

Nonprocess Industry	\$2,200
Large, Non-publicly-owned Treatment Works	\$3,700
Intermediate, Non-publicly-owned Treatment Works	\$3,200
Small, Non-publicly-owned Treatment Works	\$2,200
Agriculture (CAFO)	\$1,200
Surface Mining Operation	\$3,300

- 1 Section 2. General Permit Fees. The fee for review of a general permit to discharge
2 pollutants into waters of the Commonwealth shall be as established in Table 2 of this section.

Table 2: General Permit Fees	
Coal Mining	\$1,300
Non-Coal Mining	\$1,200
Transportation Facility	\$0
Drinking Water Treatment Plant	\$600
Groundwater Remediation	\$600
Storm Water Construction	\$250
CAFO	\$600
Storm Water Other	\$600

- 3 Section 3. Kentucky No Discharge Operational Permit (KNDOP) Fees. The fee for review
4 of a KNDOP shall be as established in Table 3 of this section.

Table 3: KNDOP Fees	
Large Animal Feeding Operation	\$1,200
Medium Animal Feeding Operation	\$400
Small Animal Feeding Operation	\$0

Industrial	\$1,200
Sanitary	\$1,200

Section 4. Multiple Categories. The cabinet shall impose the single maximum fee if a discharge falls into multiple categories.

Section 5. Short Term Permits. If the cabinet issues a permit that is effective for less than five (5) years, the fee assessed pursuant to this administrative regulation shall be adjusted proportionately to the effective term of the permit.

Section 6. Publicly Owned Facilities. A publicly owned facility shall be exempt from the fees established in this administrative regulation pursuant to KRS 224.10-100(20).

Section 7. Nonprofit Organizations. (1) A nonprofit organization that qualifies for the fee established by KRS 224.16-050(5) shall be charged the fee established by that statute.

(2) A nonprofit organization requesting a reduced fee pursuant to KRS 224.16-050(5) shall submit proof of Internal Revenue Code 501(c)(3) status with the permit application.

(3) A nonprofit organization that does not qualify for the fee established in KRS 224.16-050(5) shall be charged the applicable fee established in Sections 1 through 5 of this administrative regulation.

Section 8. Payment. (1) Check or money order shall be made payable to the Kentucky State Treasurer.

(2)(a) The applicant shall submit with the application a filing fee equal to twenty (20) percent of the permit fee.

(b) An application shall not be complete before the cabinet has received the filing fee.

(3) The cabinet shall retain the filing fee if:

(a) The cabinet denies the issuance, reissuance, or modification of the permit;

1 (b) The cabinet finds that the application is not complete pursuant to 401 KAR 5:075 Section
2 1(4) and returns the application as incomplete after the applicant has failed to submit a complete
3 application within thirty (30) days following mailing of a notice of deficiency by the cabinet; or

4 (c) The applicant withdraws the application.

5 (4)(a) The cabinet shall notify the applicant of the permit fee due after the cabinet has
6 determined that the permit shall be issued, but before the permit shall be issued.

7 (b) The applicant shall submit the permit fee within thirty (30) days of the notification
8 required by paragraph (a) of this subsection.

9 (5) The cabinet shall not issue a permit before receipt of the applicable permit fee.

401 KAR 5:310 “Surface water permit fees” approved for promulgation:

Date

Henry “Hank” List, Deputy Secretary, FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 25, 2009 at 6:00 P.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 5:310 Surface water permit fees

Contact Person: Peter T. Goodman, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation adjusts the fees codified in KRS 224.70-120. This administrative regulation also creates fees for Kentucky No Discharge Operating (KNDOP) permits and general permits, which did not have fees established in statute or regulation.
- (b) The necessity of this administrative regulation:** Fees for review of surface water permits were incorporated into statute in 1990. Regulations establishing fees for surface water permits were originally promulgated in 1983, and were not meaningfully revised when moved to KRS 224.70-120. The cabinet has not previously established a fee for a Kentucky No-Discharge Operational Permit (KNDOP) or general permit, despite the authorization to do so by KRS 224.10-100. The Division of Water is operating well below necessary staffing levels as a partial result of the insufficient permit fees. Consequently, there is a significant permit backlog in the division. This backlog results in increased scrutiny by federal regulators, delays in economic development, and leads to processing times that barely meet, and often exceed, the regulatory timeframe for review.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS Chapter 224.10-230(3) authorizes the cabinet to amend, by administrative regulation, the discharge permit fees authorized by KRS Chapter 224.70-120. KRS 224.10-230(3) further states that those fees should be based on the cost of review. The Division of Water analyzed the cost associated with the issuance of each permit and developed a draft per-KRS 13A fee schedule based on full cost recovery. However, after meeting with affected stakeholders, agreement could not be reached on the proposed draft fee schedule. The Division subsequently negotiated an agreed compromise and adjusted existing fees based on the consumer price index, which represents approximately fifty percent of the Division's cost of review. The proposed fee for those permits that did not previously have a fee in statute is a reflection of the agency's actual cost. Although the proposed fee schedule does not fully support the program costs, it is a negotiated compromise to adjusting fees for surface water permits. Please see Attachment A for an explanation of costs by permit type. KRS 224.10-100(20) exempts the collection of fees from public facilities. No attempt to collect fees for the cost of review of public facilities is included in this administrative regulation. Additionally, the Division does not intend to recover costs associated with reviewing permits for publicly owned facilities by transferring those costs to the fees imposed on other entities.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** KRS 224.10-230(3) allows for fees based on the cost of review. This administrative regulation establishes fees for categories of surface water permits for which a fee may be charged. The Division of Water has the responsibility of reviewing applications and issuing permits. These agency restricted fees go directly toward the cost of implementing this program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** Not applicable; this is a new administrative regulation.
- (b) The necessity of the amendment to this administrative regulation:** Not applicable; this is a new administrative regulation.
- (c) How the amendment conforms to the content of the authorizing statutes:** Not applicable; this is a new administrative regulation.
- (d) How the amendment will assist in the effective administration of the statutes:** Not applicable; this is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Individuals, businesses, and organizations that are engaged in the regulated disposal of treated wastewater under the surface water permitting program are affected by this administrative regulation. Pursuant to KRS 224.10-100(20), this administrative regulation does not establish a fee for a state or local government or for a political subdivision. The number of affected entities varies each year. Because a permit is valid for five years, the permit renewal dates are staggered. There are currently approximately 11,000 permitted entities, with approximately 2,200 permit actions per year. However, not all of these entities will be affected by the revised permit fee schedule. The estimated number of impacted entities is as follows:

- i. Businesses: 1,450 per year primarily through industrial permits, agriculture operations, non-public sanitary wastewater permits, and stormwater coverage issuances.
- ii. Organizations: 10 per year primarily through individual sanitary permits issued to non-501(c)(3) organizations such as churches, summer camps, and private social or sporting clubs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** The regulated entities will pay a fee for the review of surface water permits.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** Costs will vary depending on the type of permit each entity is seeking. The permits are effective for five years from issuance. Please see Attachment A for an illustration of permit fees by type. Nonprofit entities and governments are not affected by this administrative regulation. The fee structure for a 501(c)(3) organization with a small treatment facility is established in KRS 224.16-050(5). KRS 224.10-100(20) prevents the collection of fees from public facilities.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):** The current delay for processing a permit is largely a result of inadequate funding for the surface water permitting program. This backlog results in increased scrutiny by federal regulators for the regulated entities and the Division. An increase in resources for the Division will allow the division to be more responsive to permit applicants.

Kentucky's fee structure will remain competitive for attracting industry. Fees for industry are still below those in most states, such as Illinois, Virginia, Ohio, and Indiana. Additionally, the fees imposed on small businesses and individuals will be comparable to those in surrounding states. Please see Attachments B, C, and D for a comparison of fee structures with surrounding states.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

- (a) Initially:** No additional burden is anticipated. An existing mechanism is in place for collecting fees.
- (b) On a continuing basis:** No additional burden is anticipated. An existing mechanism is in place for collecting fees.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? Funding will come from the fees generated by the permits.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding are necessary to support this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation establishes fees.

(9) TIERING: Is tiering applied? (Explain why or why not).

Yes, tiering of fees is applied by this administrative regulation. This administrative regulation follows the tiering structure established in KRS 224.70-120 for individual permit fees. Additionally, the cabinet has tiered the permit fees association with Kentucky No-Discharge Operation Permits. Individual large animal feeding operation KNDOP permits will have the same fee as an individual concentrated animal feeding operation KPDES permit (\$1,200). The \$1,200 fee is the same as the CAFO fee currently established by statute, and has not been adjusted for inflation. Medium animal feeding operation KNDOP permits will have a significantly lower fee (\$400) and small animal feeding operation KNDOP permits will not be charged a fee (\$0).

Attachment A, Explanation of Costs by Permit Type
Regulatory Impact Analysis for 401 KAR 5:310

Surface Water Permit Program Average Cost

Average Administrative, Technical, & Inspector Salary	2007
Average salary, including fringe	\$53,793
Non-salary overhead = 15.6%	\$8,374
Total average salary with overhead, per year	\$62,167
Average cost per hour	\$31

Surface Water Permitting Program Projected Revenue

Permit Type	Cost per permit (2007)	Proposed Fee	Avg. Permits per year	Total Anticipated Revenue
Major Industrial	\$15,141	\$7,000	36	\$252,400
Minor Industrial	\$8,223	\$4,500	20	\$90,000
Non-Process Industry	\$6,004	\$2,200	88	\$193,600
Large Non-Publicly Owned Treatment Works	\$3,785	\$3,700	12	\$44,400
Intermediate Non-Publicly Owned Treatment Works	\$2,610	\$3,200	38	\$121,600
Small Non-Publicly Owned Treatment Works	\$2,610	\$2,200	78	\$171,600
Agricultural (CAFO Individual)	\$3,263	\$1,200	10	\$12,000
Surface Mining (Individual)	\$3,263	\$3,300	5	\$16,500
General – Coal Mining	\$1,266	\$1,300	272	\$353,600
General – Non-Coal Mining	\$1,201	\$1,200	6	\$7,200
General – Drinking Water Plant	\$600	\$600	50	\$30,000
General – Groundwater Remediation	\$600	\$600	3	\$1,800
General – Stormwater Construction	\$600	\$250	542	\$135,500
General – Stormwater Other	\$600	\$600	35	\$21,000
KNDOP – Large AFO	\$1,175	\$1,200	30	\$36,000
KNDOP – Medium AFO	\$1,175	\$400	160	\$64,000
KNDOP – Small AFO	\$1,175	\$0	45	\$0
KNDOP Industrial	\$1,175	\$1,200	28	\$33,600
KNDOP Sanitary	\$1,175	\$1,200	51	\$61,200

TOTAL PROJECTED REVENUE: \$1,646,000

Attachment B:
NPDES General Permit 5-YR* Cost Comparison by State

	Single Family Residence	Coal Mining	Non-Coal Mining	Drinking Water Treatment Plant	Groundwater Remediation	Stormwater - Other	CAFO
Kentucky Proposed	\$0	\$1,300	\$1,200	\$600	\$600	\$600	\$600**
Kentucky Existing	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Alabama	~	~	\$1,875 - \$2,725	\$645	\$645	\$0	\$1,050 - \$5,900
Florida	~	~	\$250	~	\$500	\$500	~
Georgia	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Illinois	~	~	~	~	~	\$500	~
Indiana	~	\$3,050	~	\$4,200 - \$141,000	\$3,840 - \$211,800	\$650	\$900
Mississippi	~	\$0	\$0	\$0	\$0	\$0	\$0
Missouri	~	\$360- \$450	\$360 - \$450	\$900	\$900	\$300 - \$310	\$150
North Carolina	\$360	~	\$600	~	\$600	\$100	\$360 - \$2,100
Ohio	\$200	\$200	~	~	\$200	\$350	\$200
South Carolina	~	~	\$500	\$500	\$500	\$375	\$500
Tennessee	~	\$1,250	\$125 - \$7,500	\$1,250	\$1,250	\$0 - \$3,500	\$0
Virginia	\$0	\$1,800	\$600	\$600	\$600	\$500	\$600
West Virginia	\$806	\$6,000	\$970 - \$9,250	\$680 - \$25,900	\$680 - \$25,900	\$590 - \$10,750	~

* 5-year comparison includes permit review, issuance, and annual maintenance fees based in comparison states. The fees in other states may be based on impacts, project size, or other factors. They are difficult to compare to Kentucky's flat-rate approach.

** No general permit is currently issued.

Attachment C:
NPDES Individual Permit Fee 5-YR* Comparison by State

	Kentucky (current)	Kentucky (proposed)	Illinois	Indiana	Missouri	Ohio	Tennessee	Virginia	West Virginia
Major Industry	\$3,200	\$7,000	\$12,500 - \$250,000	\$3,840 - \$211,800	\$20,000 - \$30,000	\$37,700 - \$131,950	\$3,000 - \$45,000	\$48,000	\$500 - \$5,000
Minor Industry	\$2,100	\$4,500	\$5,000 - \$250,000	\$3,840 - \$211,800	\$19,000 - \$21,000	\$200 - \$94,450	\$3,000 - \$45,000	\$16,200 - \$20,400	\$300 - \$3,000
Nonprocess Industry	\$1,000	\$2,200	\$5,000 - \$50,000	\$0	\$8,100 - \$14,100	\$200 - \$94,450	\$6,000	\$14,400	\$100 - \$2,250
Large, NPOTW	\$1,700	\$3,700	\$2,500 - \$250,000	\$2,100 - \$70,500	\$18,000 - \$21,000	\$200 - \$311,450	\$1,500 - \$45,000	\$15,000	\$450 - \$1,275
Intermediate, NPOTW	\$1,500	\$3,200	\$2,500	\$2,100 - \$70,500	\$9,750 - \$18,000	\$200 - \$311,000	\$1,500 - \$45,000	\$12,000	\$450 - \$1,275
Small, NPOTW	\$1,000	\$2,200	\$2,500	\$2,100 - \$70,500	\$750 - \$1,500	\$200 - \$311,000	\$1,500 - \$45,000	\$10,800	\$50 - \$765
Agriculture	\$1,200	\$1,200	\$0	\$900	\$30,000	\$200	\$1,500	\$0	\$0
Surface mining operation	\$1,200	\$3,300	\$25,000	\$3,300	\$5,000	\$450	\$3,250 - \$30,000	\$1,000 - \$5,000	\$1,000
Publicly owned treatment works	\$0	\$0	\$2,500 - \$250,000	\$1,700 - \$141,000	\$500 - \$1,017,500	\$200 - \$311,450	\$4,500 - \$30,000	\$9,500 - \$28,000	\$200 - \$25,000

*5 year Comparison includes both issuance and annual fees

The fees in other states may be based on impacts, project size, or other factors. They are difficult to compare to Kentucky's flat-rate approach.

Attachment D:
NPDES Stormwater Construction Fee Comparison to Neighboring States

Kentucky Existing	\$0
Kentucky Proposed	\$250
Alabama	\$240 - \$2,590, based on size or impairment
Florida	\$250 - \$400
Georgia	\$80 per acre
Illinois	\$500
Indiana	\$50
Mississippi	\$0
Missouri	\$300
North Carolina	\$65 per acre
Ohio	\$200 - \$500, based on acreage
South Carolina	\$125
Tennessee	\$0 - \$7,500, based on size
Virginia	\$300 - \$500, based on size
West Virginia	\$300 - \$1,750, based on flow

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 5:310

Contact Person: Peter T. Goodman, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation does not establish a fee for state or local government or for political subdivisions. State government will experience an increase in agency restricted funding because of the fees established in this administrative regulation.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS Chapter 224.10-230(3) permits the cabinet to amend, by administrative regulation, the discharge permit fees authorized by KRS Chapter 224.70-120. KRS 224.10-100(20) permits the cabinet to establish by administrative regulation, a schedule of fees for processing applications.

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The average revenue generated by this administrative regulation would be \$1.4 - \$1.8 million for state government, based on the number of permit applications in 2007. The surface water permit program costs approximately \$3.4 to \$3.5 million per year and the current fees only generate \$200,000 to \$400,000 per year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The average revenue expected would be \$1.4 - \$1.8 million. This will vary based on the number and type of permits processed.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not affect state expenditures because the program is already in place.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation does not impose additional costs because there are existing mechanisms to collect fees.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: